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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,819	11/17/2003	Brad S. Culbert	TRIAGE.1D1CP3C1	2185

  

20995	7590	02/08/2008
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EXAMINER	
SHAFFER, RICHARD R	

  

ART UNIT	PAPER NUMBER
3733	

  

NOTIFICATION DATE	DELIVERY MODE
02/08/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com  
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<b>Office Action Summary</b>	Application No. 10/714,819	Applicant(s) CULBERT ET AL.	
	Examiner Richard Shaffer	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16-23 and 39-48 is/are pending in the application.
- 4a) Of the above claim(s) 40-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-23 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species I (Figure 1) in the reply filed on November 28<sup>th</sup>, 2007 is acknowledged.

Applicant asserted that claims 16-23 and 39 read upon the elected species as well as stating that claim 16 was generic to all species. The examiner agrees on both counts.

Claims 40-48 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on November 28<sup>th</sup>, 2007.

### ***Terminal Disclaimer***

The terminal disclaimer filed on June 19<sup>th</sup>, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of patents 6,685,706; 6,648,890; 6,511,481; 6,348,053; and 5,893,850 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The previous nonstatutory obvious-type double patenting rejections have been overcome and are hereby withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 16-23 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Sander et al (US Patent 5,720,753).

Sander et al disclose a device (**Figures 1-12**) comprising: an elongate tubular body (**100'**, **Figure 7A**) having a proximal end (left side) and a distal end (right side); the tubular body having an annular ridge retention member (**130**); a distal anchor having two axial strips (**115'**, **Figure 7A**) moveable from an axial orientation to an inclined orientation; a proximal anchor (radially extending head portion of **100'**); an elongate pin (**203'**, **Figure 8** or **200''**, **Figure 10**) moveable within the tubular body (**100'**) in a proximal direction relative to the tubular body; the pin having radially inwardly ramped retention members (**230**), the ramps having annular ridges at the peaks of the ramps.

### ***Response to Arguments***

Applicant's arguments filed June 19<sup>th</sup>, 2007 have been fully considered but they are not persuasive. Applicant asserts the new limitation of "coupled" versus the previous recitation of "linked" with regard the elongate pin's relationship with the anchor is not anticipated by Sander et al. The examiner respectfully disagrees. The anchor and pin are clearly coupled when the pin is placed within the tubular body. Further, contact is even made at all times with the anchor through the device with the proximal end of the pin through the proximal aperture of the tubular body. Also, when pulling the pin through, the flared end of the pin (**206**) makes contact with the distal anchor (see

**Figure 6** which clearly depicts the pin contacting the distal anchor). With all understanding, Sander et al clearly discloses a pin linked/coupled/contacting the distal anchor.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Shaffer whose telephone number is (571)272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Richard Shaffer*

Richard Shaffer  
February 4<sup>th</sup>, 2008

  
EDWARD C. ROBERT  
SUPERVISORY PATENT EXAMINER